IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9442 OF 2004

R.C. Dohare. ...Petitioner.

Vs.

Estate Officer, Western Railway &Ors..Respondents.

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Mr.C.J.Sawant, Senior Advocate with Mr.Ramesh Ramamurthy for the Petitioner.

Mr.Suresh Kumar for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

April 13, 2005.

P.C. :

Rule, by consent made returnable forthwith. The Respondents waive service. By consent of the Counsel and at their request taken up for hearing and final disposal.

2. The Petitioner is a Deputy Chief Electrical

Engineer in the Western Railway. On 18th April 2001, the Petitioner was transferred from his posting at Mumbai to Ranchi and he assumed charge there on 30th April 2001. The Petitioner having not vacated the service accommodation which was allotted to him at Mumbai, the General Manager of the Western Railway filed an application on 15th May 2002 before the Estate Officer. The Estate Officer issued a notice under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, on 6th June 2002. An order of eviction was passed against the Petitioner under Section 5(1) on 16th December 2002. The Petitioner filed an appeal under Section 9. When the appeal came up before the Principal Judge of the City Civil Court, an undertaking was filed by the Petitioner on 4th February 2003 by which the Petitioner undertook to vacate the quarters on or before 31st May 2003. The Petitioner agreed to pay special licence fee as paid hitherto until he vacated the quarters. The appeal was heard and dismissed on merit on 5th February 2003, but in view of the undertaking, the Petitioner was given time to vacate the premises until 31st May 2003 subject to the condition that he would pay licence

fee as prescribed by the authorities for such occupation. The Petitioner vacated the quarters much after the period by which he had undertaken to vacate and it is common ground that he vacated the quarters sometime in October 2003. On 15th July 2003, a letter was received by the Petitioner that he was liable to pay damages for the period during which he was in unauthorised occupation of the quarters. The petitioner filed an appeal before the Principal Judge of the City Civil Court which has been dismissed by the impugned order dated 14th September 2004.

3. In the course of his judgment, the Principal Judge has adverted to a circular of the Director of Establishment(B) dated 2nd April 2004 in which it has been stated that a Railway employee on permanent transfer from one station to another, may be permitted to retain Railway accommodation at the former station of posting for a period of two months on payment of normal rent or single flat rate of licence fee. However, on a request by an employee, on grounds of education or sickness, the period of retention can be extended for a period of six months on payment of special licence fee that

would be double the rate of the normal licence fee/rent and further extension may be granted on educational grounds only to cover the academic session in which he/she was transferred on payment of special licence fee.

4. There is merit in the submission which has been urged on behalf of the Respondents that the Petitioner cannot be permitted to occupy the quarters for the entire term during which he occupied the accommodation at Mumbai during his transfer to Ranchi merely on the payment of a special licence fee which is double the rate of the licence fee/rent which was liable to be paid by him. The period during which occupation of service quarters can be allowed upon transfer, and the special licence fee payable for that period have been fixed. If an employee unauthorisedly retains the quarters as in the present case, beyond the said term, he must be liable to pay damages. However, damages have to be assessed and determined. The procedure for doing is solaid down in Section 7 of the Act. In the present case, admittedly no notice has been furnished under Section 7 of the Act and a computation of damages

has not been made in accordance with the provisions of that Section. In the circumstances, it is only correct and proper that the assessment of damages be carried out by the Estate Officer in accordance with the procedure prescribed by Section 7 of the Act.

5. The Principal Judge was of the view that the order passed by his predecessor on 5th February 2003 and the undertaking which was filed by the Petitioner would oblige him to pay whatever has been determined. That, in my view, is not a correct reading of the order of the Principal Judge of 5th February 2003 because the order directed that the Petitioner shall continue to pay licence fee as prescribed by the authorities for his occupation. The word "prescribed" necessarily meant prescribed in accordance with law and the relevant provision of law, to which a reference has already been made above, is Section 7 of the Act.

6. During the pendency of these proceedings in pursuance of an interim order dated 3rd December 2004, the Petitioner has deposited an amount of Rs.1,50,000/- with the Railway authorities. This

amount shall, it is directed, be adjusted against the damages which may be found to be due and payable by the Petitioner upon an assessment carried out under Section 7 of the Act.

7. In these circumstances, this petition is disposed of by granting liberty to the Respondents to issue a notice to the Petitioner under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for the assessment and quantification of damages payable by the Petitioner for the unauthorised occupation of the service accommodation until the date on which the accommodation came to be vacated. The quantification shall be arrived at in compliance with law and after furnishing to the Petitioner an opportunity of being heard. The order passed by the Principal Judge of the City Civil Court of 14th September 2004 shall to the extent stand substituted by the aforesaid directions. Counsel appearing on behalf of the Respondents states that a notice to show cause under Section 7 shall be issued within a period of four weeks from today. The Petitioner shall file his reply thereto, if he seeks to do so, within a period of four weeks of

receipt or such period as is allowed. The authority shall make its determination within two months thereafter, or if no reply is filed, within two months of the expiry of the period fixed for the submission of a reply.

8. The Petition is disposed of in the aforesaid terms. No costs.

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